

**AGREEMENT BETWEEN THE CITY OF SAN JOSE
AND EVANS LANE APARTMENTS, LP
FOR SALE OF SURPLUS CITY-OWNED REAL PROPERTY**

THIS AGREEMENT is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY") and EVANS LANE APARTMENTS, LP, a California limited partnership (hereinafter "BUYER") upon execution by CITY (hereinafter "Effective Date").

WITNESSETH:

WHEREAS, the City Council has found and determined that CITY-owned property described in EXHIBIT A is not needed for, nor adaptable to, municipal purposes and is Surplus Property, and that the public interest and necessity will be served by its sale; and

WHEREAS, Section 4.20.050 of the San José Municipal Code authorizes the sale of surplus CITY-owned real property to the owner or owners of property adjacent to such Surplus Property at private sale at the fair market value thereof without notice, subject to such terms and conditions as the City Council of CITY may, in its discretion, provide, and the City Council desires to sell such Surplus Property to BUYER pursuant to such Section 4.20.050.

NOW, THEREFORE, in consideration of their mutual promises, covenants and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Property to be Conveyed.

Subject to the provisions of this AGREEMENT, CITY shall transfer and convey to BUYER by Quitclaim Deed, and BUYER shall purchase and take from CITY, all of the CITY's right, title and interest in and to that certain real property situated in the City of San

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José, County of Santa Clara, State of California, more particularly described in EXHIBIT A attached hereto and made a part hereof, and hereinafter referred to as "Surplus Property."

2. Purchase Price.

BUYER shall pay to CITY, in consideration of CITY's conveyance to BUYER of said Surplus Property, the sum of SIX THOUSAND NINETY-THREE AND NO/100 DOLLARS (\$6,093.00). Said sum shall hereinafter be referred to as the "Purchase Price".

3. Tender and Acceptance of Payment.

BUYER shall deposit the full Purchase Price with the CITY's General Services, Real Estate Services and Asset Management Division at 1661 Senter Road, San Jose, California 95112. By its execution of this Agreement, CITY accepts said deposit as full compensation for the Surplus Property.

4. Delivery and Recording of Deed and Real Property Taxes.

No later than thirty (30) days from the date of the execution of this AGREEMENT by the CITY, CITY shall record a Quitclaim Deed conveying title to BUYER of said Surplus Property in the office of the Santa Clara County Recorder. The Santa Clara County Recorder's Office shall mail said Quitclaim Deed to BUYER after its recordation. Real property taxes shall be payable by BUYER from and after the date of recordation of the Quitclaim Deed.

4. Additional Fees and Charges.

BUYER shall be responsible for the full payment of all title insurance, escrow, recording fees, documentary transfer taxes and other fees and charges associated with this transaction. CITY shall have no liability or responsibility for any such fees, costs, taxes or expenses.

5. Delivery and Recordating of Deed and Real Property Taxes.

No later than thirty (30) days from the date of the execution of this AGREEMENT by the CITY, CITY shall record a Quitclaim Deed conveying the Property to BUYER, in substantially the same form as EXHIBIT B attached hereto. Real property taxes shall be payable by BUYER from and after the date of recordation of the Quitclaim Deed.

6. Buyer's Sole Remedy for Failure to Convey.

In the event that CITY shall, for any reason, be unable to convey title of said Surplus Property on the Closing Date, then the AGREEMENT shall be automatically terminated and any and all amounts paid by BUYER pursuant to the AGREEMENT shall be immediately returned to BUYER without the need for the CITY's or BUYER's further consent or instructions. BUYER shall have no other right of action against CITY and shall not be entitled to recover any damages from CITY, and all parties hereby shall return to status quo ante.

7. Condition of Title.

The title to be delivered by CITY hereunder shall be subject to all exceptions, encumbrances, liens and restrictions of record and not of record, as of the date of the execution of Quitclaim Deed.

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8. Condition of Property/Right of Entry.

BUYER is acquiring the Surplus Property and any improvements "as is" and in reliance on BUYER's own investigation, and no representations or warranties of any kind whatsoever, express or implied, have been made by CITY. BUYER further acknowledges that BUYER is aware of all zoning regulations, other governmental requirements, site and physical conditions and other matters affecting the use and condition of the property, and agrees to acquire the Surplus Property in the condition that it is in at the time of the execution of the Quitclaim Deed.

9. Indemnification and Hold Harmless.

BUYER agrees to protect, defend, indemnify and hold harmless, CITY, its officers, employees, or agents, from and against all claims, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (collectively, "claims") of any kind whatsoever paid, incurred, suffered or asserted, or related to, on or after delivery of the Quitclaim Deed directly or indirectly arising from or attributable to conditions on or BUYER's use of the Surplus Property (including BUYER's use of the Surplus Property before the Effective Date), including any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the Surplus Property, regardless of whether undertaken due to governmental action. To the fullest extent permitted by law, the foregoing hold harmless and indemnification provision shall apply except where such claim is the result of sole active negligence or willful misconduct of CITY, its officers, agents or employees. Without limiting the generality of this indemnity and hold harmless provision in any way, this

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provision is intended to operate as an Agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 in order to indemnify, defend, protect and hold harmless CITY for any liability pursuant to such sections. CITY and BUYER agree that for purposes of this AGREEMENT, the term "Hazardous Substance" shall have the definition set forth in EXHIBIT C, which is attached to this AGREEMENT and incorporated by reference. BUYER, for itself, its legal representatives and assigns, releases CITY from any and all claims and causes of action that it had, now has, or claims to have, or that any person claiming through them may have, or claim to have, arising out of any use of, or conditions on, the Surplus Property (including uses of or conditions on the property undertaken or caused by BUYER prior to the Effective Date).

10. General Release.

BUYER acknowledges that it has read and understood the following statutory language of Civil Code Section 1542:

A general release does not extend to a claim, which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Having been so apprised on or after delivery of the Quitclaim Deed, BUYER elects to assume all risk for claims heretofore or hereafter, known or unknown, arising from the subject of this release, and BUYER knowingly and voluntarily expressly release the CITY from all liability, unknown or unsuspected, arising out of any use of, or conditions on, the Surplus Property; except where such claim is of the sole active negligence or misconduct of

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the CITY. The provisions of this Paragraph shall survive the expiration or earlier termination of this AGREEMENT.

11. Binding on Successors.

This AGREEMENT inures to the benefit of and is binding on the parties, their respective heirs, personal representatives, successors and assigns.

12. Merger: Entire Agreement.

This AGREEMENT supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between CITY and BUYER relating to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby. The terms of this AGREEMENT shall not be modified or amended except by an instrument in writing executed by each of the parties hereto.

13. Brokers.

BUYER and CITY each represent that it has not dealt with any broker, agent, finder, or other person who might claim a commission or similar compensation in connection with transaction contemplated hereby.

14. Notices.

Notices relating to this AGREEMENT must be in writing and sent to the addresses set forth below each party's signature. But a party may change its address for notices by giving notice as required by this Section 14. A written notice will be considered given (i) when personally delivered; (ii) two business days after deposit in the U.S. Mail as first class mail, certified or registered, return receipt requested, with postage prepaid; (iii) one

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business day after deposit with a reputable overnight delivery service for next business day delivery; or (iv) on the business day of successful transmission by electronic facsimile.

15. Miscellaneous.

- a. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.
- b. If there be more than one entity designated in or signatory to this Agreement, the obligations hereunder imposed upon CITY shall be joint and several; and the term CITY as used herein shall refer to each and every of said signatory parties, severally as well as jointly.
- c. Time is and shall be of the essence of each term and provision of this Agreement.
- d. Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for CITY's entry into this Agreement, and any breach hereof by CITY or BUYERS shall be deemed to be a material breach. Each term and provision of this Agreement performable by CITY or BUYERS shall be construed to be both a covenant and a condition.
- e. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of California. Venue for any proceeding to enforce the provisions of this Agreement shall be in the County of Santa Clara.
- f. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

- g. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either BUYERS or CITY in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.
- h. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein. The exhibits to this Agreement are as follows:

EXHIBIT A – Legal Description of City Property
to be Conveyed to the BUYER

EXHIBIT B – Form of Quitclaim Deed

EXHIBIT C Hazardous Substances

- i. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.
- j. Days, unless otherwise specified, shall mean calendar days.
- k. The Director of General Services is authorized to execute, on behalf of the City, deeds and all other documents as may be necessary to effectuate this Agreement and the transfer of property rights herein.

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WITNESS THE EXECUTION HEREOF on the date of execution by CITY as written below:

APPROVED AS TO FORM:

Name: Mark DeCastro
Title: Sr. Deputy City Attorney

"CITY"
CITY OF SAN JOSE, a municipal
corporation of the State of California

Lee Price, MMC
City Clerk

Date of Execution: _____

"BUYER"
EVANS LANE APARTMENTS L.P.,
a California limited partnership

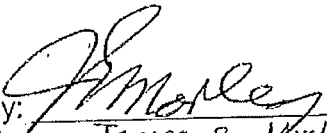
By: 
Name: James S. Morley
Title: Manager, Nortalvo Assoc. LLC

EXHIBIT "A"
LEGAL DESCRIPTION

Number
DD-885004-01-02

EXHIBIT "A"

A portion of Parcel C-1 of that Record of Survey filed May 4, 1966 in Book 209 of Maps, Page 7 in the office of the County Recorder of Santa Clara County, described as follows:

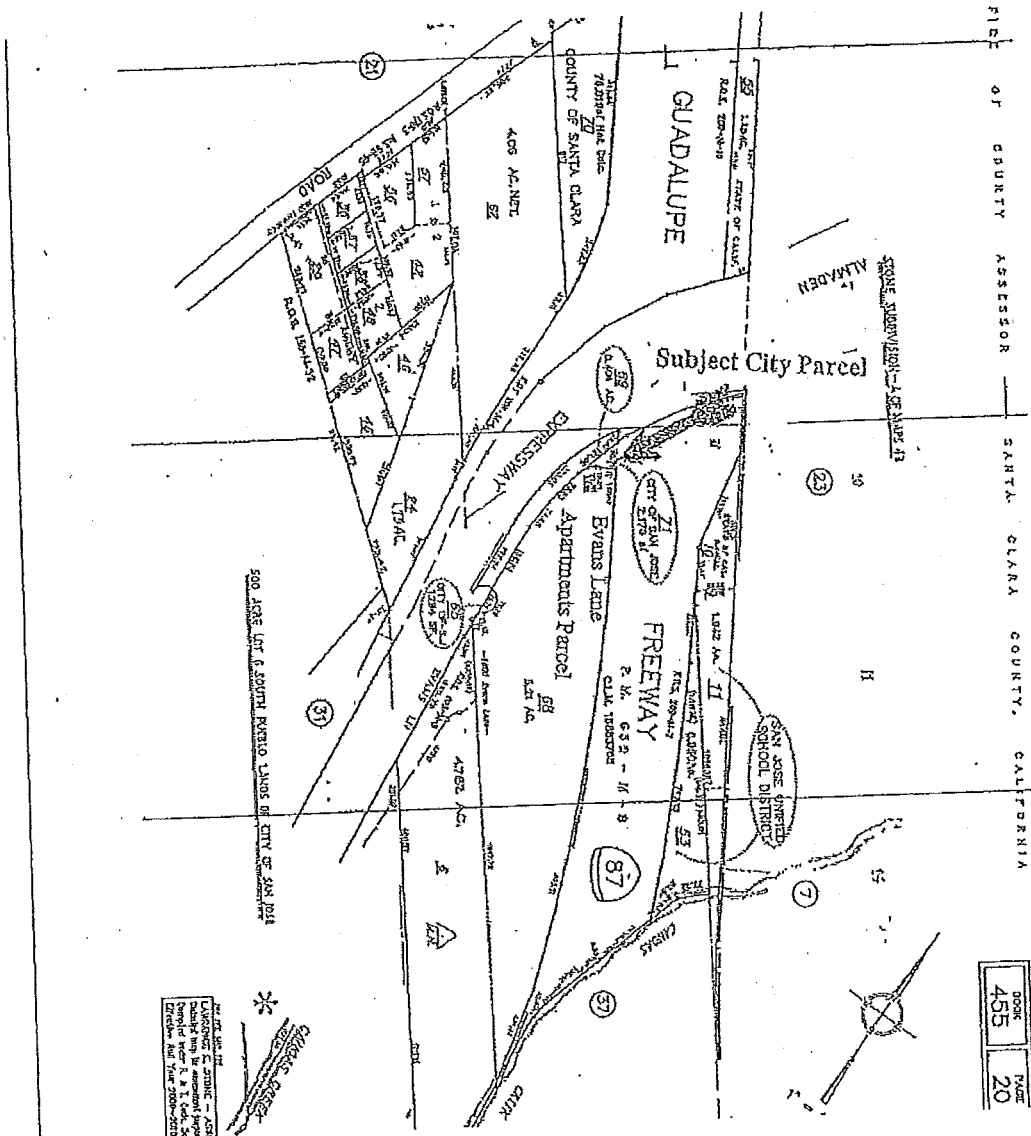
COMMENCING at the most northerly corner of that parcel of land described in Director's Deed No. DD-885004-01-01 recorded September 2, 1992 in Book M358, Page 650, Official Records of Santa Clara County; thence along the general northwesterly line of last said Parcel the following four (4) courses: 1) S. 58°40'55" W., 38.00 feet, 2) along a tangent curve to the right with a radius of 38.00 feet, through an angle of 15°12'55", an arc length of 10.09 feet to a point of reverse curvature, 3) along a tangent curve to the left with a radius of 22.00 feet, through an angle of 58°05'01", an arc length of 22.30 feet, and 4) S. 26°14'17" W., 27.21 feet to the easterly line of Almaden Expressway as said Almaden Expressway is shown on said Record of Survey; thence along last said line N. 17°54'08" E., 121.07 feet; thence S. 31°19'05" E., 60.71 feet to the point of commencement.

CONTAINING 2,176 square feet, more or less.

There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent State freeway.

The bearings and distances used in the above description are on the California Coordinate System of 1927, Zone 3. Multiply the above distances by 1.0000487 to obtain ground level distances.

EXHIBIT "A" MAP



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EXHIBIT "B"

FORM OF QUITCLAIM DEED

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE OF
THE STATE OF CALIFORNIA

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:
AND MAIL TAX STATEMENT TO:
Evans Lane Apartments, LP
Attn: Alexis Grant
JSM Enterprises
3190 S. Bascom Ave. #240
San Jose, CA 95124

With a copy to:

City of San Jose – General Services
1661 Senter Rd.
San Jose, CA 95112
APN: 455-20-071

Space above this line for Recorder's use

Document transfer tax is _____
Computed on full value of property conveyed
City Transfer tax is _____

Signature of declarant _____

QUITCLAIM DEED

For good and valuable consideration, the receipt and adequacy of which are acknowledged, the City of San Jose, a municipal corporation of the State of California (Transferor) does remise, release, and forever quitclaim to Evans Lane Apartments, LP, a California limited partnership (Transferee) all right, title, and Interest Transferor has in the real property located in the County of Santa Clara, California, described in attached Exhibit A and incorporated by reference.

IN WITNESS WHEREOF, the Quitclaimor has caused this instrument to be executed as of this _____ day of _____, 2010.

CITY OF SAN JOSE, a municipal corporation of the
State of California

By: _____

Name: Peter Jensen

Title: Director of General Services

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[Acknowledgment]

[Exhibit A (legal description).]

EXHIBIT "C"

HAZARDOUS SUBSTANCES

For the purpose of this AGREEMENT, "HAZARDOUS MATERIALS" shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this AGREEMENT, "ENVIRONMENTAL LAWS" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up.